



Alvin A. Jaeger  
Secretary of State  
State of North Dakota  
600 E Boulevard Ave Dept 108, 1st Floor  
Bismarck ND 58505-0500

December 1, 2011

**Re: Clarification of North Dakota Law Following *Libertarian Party of North Dakota v. Jaeger*, No. 10-3212 (8th Cir. Oct. 17, 2011)**

Dear Secretary Jaeger,

I write on behalf of my clients, the Libertarian Party of North Dakota and its 2010 candidates Richard Ames, Thommy Passa and Anthony Stewart (the “Libertarians”), who are the plaintiff-appellants in the above-referenced matter. As you know, the Libertarians commenced this action, naming you as the defendant in your official capacity, to challenge the constitutionality of North Dakota Century Code § 16.1-11-36 (“Section 16.1-11-36”). The District Court dismissed the case and, in an Opinion entered on October 17, 2011 (enclosed), the Federal Court of Appeals for the 8th Circuit affirmed.

We are writing to request clarification of North Dakota law following the decision in this case, because the 8th Circuit’s Opinion construes a key statutory provision in a way that appears to conflict with its plain language. Specifically, the Court characterized the “7,000 signature requirement” that a party must meet in order to qualify for North Dakota’s primary election ballot as a “one-time occurrence.” Op. at 14 (citing N.D.C.C. § 16.1-11-30 (“Section 16.1-11-30”)). “Once a party is established using the 7,000 signatures,” the Court averred, “it will not have to regain those signatures in future years.” Op. at 14. The plain language of Section 16.1-11-30 seems to provide, however, that a party must submit “a petition signed by at least seven thousand qualified electors” in each election cycle, unless the party was ballot-qualified in the preceding general election, and one of its candidates for statewide office received “at least five percent of the total vote cast for the office the candidate was seeking.” N.D.C.C. § 16.1-11-30 (emphasis added). And in fact, the Libertarians did submit a 7,000 signature petition, which North Dakota certified as valid, not only in 2010, but also in 2008 and 1988.

On October 31, 2011, the Libertarians filed a Petition for Rehearing (enclosed), which requested that the Court correct the apparent misstatement of law on which its holding relies. The Court’s conclusion in this case, that the minimum vote requirement imposed by Section 16.1-11-36 is “necessary” to achieve North Dakota’s regulatory interests, is based on the assumption that the 7,000 signature requirement is a “one-time occurrence.” Op. at 12-14. The minimum vote requirement, the Court reasoned, is “the only protection the state has from frivolous party candidates and ballot overcrowding in

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subsequent elections.” Op. at 14 (emphasis added). The rationale underpinning the Court’s decision thus appears to be erroneous, unless North Dakota in fact construes the 7,000 signature requirement imposed by Section 16.1-11-30 to be a “one-time occurrence,” as the Court asserted. Op. at 14.

On November 23, 2011, the Court denied the Libertarians’ Petition for Rehearing without opinion. The conflict between the Court’s Opinion and North Dakota law thus remains unresolved: Section 16.1-11-30 appears to require that the Libertarians submit yet another 7,000 signature petition in order to qualify for North Dakota’s 2012 primary election ballot, but the Court based its decision in this case on the conclusion that they do not. The Libertarians therefore request that you resolve the conflict by confirming that North Dakota construes Section 16.1-11-30 as stated in the Court’s Opinion. Specifically, the Libertarians request that you confirm that the 7,000 signature requirement imposed by Section 16.1-11-30 is a “one-time occurrence,” and that the Libertarian Party of North Dakota is qualified for North Dakota’s 2012 primary election ballot by virtue of its successful submission of a 7,000 signature petition in a prior election cycle. If you conclude, contrary to the Court’s Opinion, that the Libertarians must submit another 7,000 signature petition in order to qualify their party for North Dakota’s 2012 primary election ballot, the Libertarians request clarification of the proper construction of Section 16.1-11-30, in light of the Court’s conclusion that “Once a party is established using the 7,000 signatures, it will not have to regain those signatures in future years.” Op. at 14.

Finally, the next deadline for submitting the petition required by Section 16.1-11-30 is April 13, 2012. The Libertarians are planning to submit another such petition on or before that date, unless you confirm that they need not do so, in accordance with the Court’s Opinion in this case. Given the substantial time, money and resources necessary to conduct a successful petition drive, and the difficulty of doing so during the North Dakota winter, the Libertarians ask that you reply to this request at your earliest convenience, so that they may plan accordingly.

Thank you for your attention to this matter. We look forward to your reply.

Sincerely,

Oliver B. Hall  
*Counsel to the Libertarian Party of North  
Dakota, Richard Ames, Thommy Passa and  
Anthony Stewart*